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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,057

10/30/2003

Glenn Park

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8127

7590

10/16/2006

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EXAMINER

SAGER, MARK ALAN

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/697,057	Applicant(s) PARK, GLENN	
	Examiner M. A. Sager	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant is advised that the Notice of Allowance mailed April 4, 2006 is vacated per letter mailed September 18, 2006. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.
2. The indicated allowability of claims 1-15 is withdrawn in view of the newly discovered reference(s) to Bendo, Berghofer and DeRosa. Rejections based on the newly cited reference(s) follow.

Information Disclosure Statement

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 103

4. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendo (5743807) in view of Conley (5082283). Bendo discloses golf training device (figs. 1-7g) as an aide (14, 15, 16) for assisting a golfer in swinging a club with a preferred and consistent tempo (2:18-25, 44-47), comprising a generating means (17-24, 26-30) for generating sound patterns having user independently time duration adjustable components (4:28-65, refs. 24d-24e)

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corresponding to i) a time duration for a back swing of a golf club, ii) a time duration of a pause at the top of the back swing iii) a time duration for a down swing of the golf club (4:41-67) and housing means (14) for supporting the generating means and for transmitting the sound patterns to the golfer for sensing by a golfer as a preferred swing tempo for the golf club. Bendo discloses a generating means as sound or visual but lacks disclosing physical vibration generating means as the form of generating means supported by the housing of claim 1, electromechanical means including a motor (clm 7), within [hand-] grip portion of a golf club (clm 10, 12, 15), grip of the golf club (clm 11) and a component support plate... gripping of the golf club (clm 13). Conley discloses a trainer that provides either visual, tactile or audible output (1:5-9, 2:21-54, 3:65-67) teaching a physical vibration generating means such as a vibrating device or electromechanical means consisting of a motor (3:65-67, 4:51-56) for tactile feedback in the grip-portion of a club that includes a component support plate... gripping of the golf club (4:42-56). Therefore, it would have been obvious to an artisan at a time prior to the invention to add a physical vibration generating means as a electromechanical means including a motor supported by a housing that is within a [hand-] grip portion of a golf club and a component support plate... gripping of the golf club as suggested/taught by Conley to Bendo to provide tactile feedback so as to not be disruptive to either golfers nearby. Further, Bendo has a LCD that is an array of light where the LCD performs same function or purpose as an array of light sources responsive to the user programmable means for visually displaying the preferred swing tempo of the golf club (4:10-67, 644-48, ref. 30). Also, although Conley is believed to suggest tubular case to protect electronics at least due to being within grip that inherently is a tubular case, Burke (2002/0160848, 6413167) or Tuer (2002/0077189) is provided as further evidence

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only of an aide that provides tactile feedback with the housing being a tubular case to protect electronics or to comply with USPGA rules governing golf equipment.

5. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendo in view of Conley as applied to claim 1 above, and further in view of Berghofer (5082281) or, in the alternative, obvious over Bendo in view of Conley as applied to claim 1 above, and further in view of Berghofer and Sabowitz (5558519). Alternatively, where an array of light sources precludes one light, Bendo in view of Conley discloses an aide comprising claimed features (sic) except a plurality of light sources for an array of light sources, as claimed. Berghofer discloses a timing aid that is programmable by a user upon use of rate selector switch (7:27-53, ref. 14) where the aide provides audible output (abstract, 3:10-41, 4:29-32, fig. 1) in conjunction with a visual display responsive to the user programmable means for visually displaying the preferred tempo of the golf club as an animated stick figure showing timed golf swing (3:9-41, 3:62-68, 4:33-34, 5:64-68, 6:9-14, 7: 54-65, figs. 4a-4c, ref. 42) so user may visualize actions to take to realize benefit of timing aid (7:54-59). The animation taught by Berghofer performs the same function of indicating user set tempo for visual instruction as claimed array of light sources for same purpose. Thus, it would have been obvious to an artisan at a time prior to the invention to add an array of light sources responsive to the user programmable means for visually displaying the preferred swing tempo of the golf club as suggested by Berghofer to Bendo in view of Conley so user may visualize actions to take to realize benefit of timing aid (7:54-59). Further, alternatively, Berghofer includes a display that may be a single light source. Sabowitz discloses a training aid comprising a light source (ref 17) that provides visual output of tempo that is either an array of light sources or is equivalent to claimed array of lights for performing same function

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with same structure in that a light is visually signaling the tempo set by user. Alternatively, it would have been obvious to a user to duplicate Sabowitz display (ref 17) and its function so as to produce an array of lights providing visual output of the tempo set by user. *In re Hazra*, 124 USPQ 378. Further, in consideration Berghofer's teaching of providing golfer an easily recognizable representation of the golf stroke to be engaged in by the golfer while using the device (3:37-41) such as by display of an animated tempo so user can visualize actions to take to realize benefit of timing aid, Sabowitz array of light sources (at least per duplication of parts, sic) would be responsive to the user programmable means for visually displaying the preferred swing tempo for the golf club so user can visualize actions to take to realize benefit of timing aid. Thus, it would have been obvious to an artisan at a time prior to the invention to add an array of light sources [as a plurality of lights] responsive to the user programmable means for visually displaying the preferred swing tempo for the golf club as suggested by Berghofer and Sabowitz to Bendo in view of Conley so user can visualize actions to take to realize benefit of timing aid. Essentially, an array of light sources responsive to programmable means for visually displaying preferred tempo such as an array of LEDs as suggested by Berghofer and Sabowitz is cheaper to manufacture than a display with animation stick figure that is responsive to programmable means due to expense of lcd like screen and cost of programming animation; whereas, leds are relatively inexpensive in comparison.

6. Claims 1-4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendo (5743807) in view of either DeRosa (6547434) or Fulford (5959230). Bendo discloses golf training device (figs. 1-7g) as an aide (14, 15, 16) for assisting a golfer in swinging a club with a preferred and consistent tempo (2:18-25, 44-47), comprising a generating means(17-24, 26-30)

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for generating sound patterns having user independently time duration adjustable components (4:28-65, refs. 24d-24e) corresponding to i) a time duration for a back swing of a golf club, ii) a time duration of a pause at the top of the back swing iii) a time duration for a down swing of the golf club (4:41-67) and housing means (14) for supporting the generating means and for transmitting the sound patterns to the golfer for sensing by a golfer as a preferred swing tempo for the golf club. Bendo discloses a generating means as sound or visual but lacks disclosing physical vibration generating means as the form of generating means supported by the housing of claim 1. DeRosa shows a timer device (figs. 1-4) as a timing device (10) that includes a housing (14) with a physical vibration generation means (30). The timing device is worn by the user and indicates a selected time interval has elapsed by vibrations (5:10-25). DeRosa is particularly advantageous to either visual or hearing-impaired users of the device. Alternatively, Fulford discloses a tactile tempo-indicating device (figs. 1-7) that includes a housing (24) with a vibration generating means (figs. 1, 2a, 2b, 5, refs. 32a, 32b, 34, 36). The tempo-indicating device is attached to a user by a clip (ref 26). Fulford indicates (1:39-48) that the vibration generating device is particularly advantageous since a non-audible means to convey the tempo does not distract, annoy or alert the use of the device to others adjacent to the user. DeRosa and Fulford are each relevant prior art at least due to being reasonably pertinent to the particular problem with which the applicant was concerned in the use of vibration in lieu of either sound or visual indicator in a training device. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In view of the teachings of either DeRosa or Fulford, it would have been obvious to an artisan at a time prior to the invention to include a physical vibration generating means supported by the housing means of Bendo since this permits either visually or hearing impaired

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users to benefit in tempo training without distracting others (DeRosa, 5:20-22) or, alternatively, since this would allow the golfing aid to be used without distracting, annoying or alerting others near the user of the training device (Fulford, 1:39-48). Essentially, the physical vibration generating means, even when read in light of the instant specification is taught/suggested by the combination of Bendo in view of either DeRosa or Fulford and fails to preclude the combination.

7. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendo in view of either DeRosa or Fulford or, alternatively, over Bendo in view of either DeRosa or Fulford as applied to claim 3 above, and further in view of Sabowitz (5558519). Regarding claim 5, Bendo has a LCD that is an array of light where the LCD performs same function or purpose (4:10-67, 644-48, ref. 30). Alternatively, it would have been obvious to an artisan to duplicate display (ref 30) of Bendo and its function so as to produce an array of lights providing visual output of the tempo set by user. *In re Hazra*, 124 USPQ 378. Bendo in view of either DeRosa or Fulford discloses claimed aide (sic) including a visual display means (30) and suggests user operable means for activating means for generating as either light or vibration (6:44-48) in so far as Bendo teaches switching or activating means for light/sound, it would similarly be obvious to an artisan to add switching or activating means for vibration similar to switching for either light or sound. Also, DeRosa includes a means for activating either audible/sound or vibratory output (figs. 1-3, ref 28), or visual/light (5:26-38, 49-51); while, Fulford shows a means for activating either visual, audible or vibratory output (5:48-52, 59-61) as user desires that further suggests claimed means for activating. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-

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32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case, Bendo or Bendo in view of either DeRosa or Fulford includes or suggests an aide having an array of light sources with means for activating, as claimed.

Alternatively, Sabowitz has a display (ref 17) that is either an array of light sources or is equivalent to claimed array of lights for performing same function with same structure in that a light is visually signaling the tempo set by user. Alternatively, it would have been obvious to a user to duplicate Sabowitz display (ref 17) and its function so as to produce an array of lights providing visual output of the tempo set by user. *In re Hazra*, 124 USPQ 378. It would have been obvious to an artisan at a time prior to the invention to add an array of light sources as suggested/taught by Sabowitz to Bendo in view of either DeRosa or Fulford to visually display tempo since some users may prefer visual re-enforcement or visual instruction.

8. Claims 7-8 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendo in view of either DeRosa or Fulford as applied to claim 3 or 1 above, and further in view of Conley (5082283). Bendo in view of either DeRosa or Fulford suggests claimed aide including a visual display means (sic) except electromechanical means including a motor (clm 7), within [hand-] grip portion of a golf club (clm 10, 12, 15), grip of the golf club (clm 11) and a

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component support plate... gripping of the golf club (clm 13). Conley discloses a trainer teaching a tactile signaling device such as a vibrator or a tactile signal generator such as a vibrating device consisting of a motor (3:65-67, 4:51-56) for tactile feedback in the grip-portion of a club that includes a component support plate... gripping of the golf club (4:42-56).

Therefore, it would have been obvious to an artisan at a time prior to the invention to add a electromechanical means including a motor and housing is within a [hand-] grip portion of a golf club and a component support plate... gripping of the golf club as suggested/taught by Conley to Bendo in view of either DeRosa or Fulford to provide tactile feedback so as to not be disruptive to either golfers nearby. Also, although Conley is believed to suggest tubular case to protect electronics at least due to being within grip that inherently is a tubular case, Burke (2002/0160848, 6413167) or Tuer (2002/0077189) is provided as further evidence only of an aide that provides tactile feedback with the housing being a tubular case to protect electronics or to comply with USPGA rules governing golf equipment.

Response to Arguments

9. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. With respect to Applicant's assertion of patentability for vibration patterns as amended in pending claims, Bendo (cited in paragraph 5 of instant specification) teaches claimed timing, but lacks vibratory output. Conley, Fulford or DeRosa each suggest providing tactile or vibratory feedback (sic). The combination of Bendo in view of either Conley, Fulford or DeRosa taken as a whole at a time prior to the invention suggests to an artisan, an aide with vibration generating means generating vibration patterns that are independently user adjustable according to phasing of golf swing within a housing supporting the

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generating means. Essentially, claimed aide fails to preclude golf aide suggested by combination of Bendo in view of either Conley, Fulford or DeRosa. In this case, Bendo in view of either Conley, DeRosa or Fulford includes or suggests an aide having a generating means that is user adjustable corresponding to timing of golf swing that is supported in a housing means, as claimed, so as to avoid distracting others nearby or to provide aide for those visually or hearing impaired.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Marocco discloses a training device.

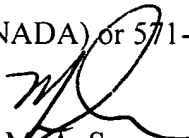
11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hotaling can be reached on 571-272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



M. A. Sager
Primary Examiner
Art Unit 3712

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